

## **Chapter 30 Rules Governing Practice and Procedure Before the State Commission for Human Rights**

### **Article 1 Inquiries**

**6 AAC 30.010. Complaint** Repealed 3/12/81.

**6 AAC 30.011. Acceptance of inquiry** A person may inquire about the human rights law or secure technical assistance to comply with AS 18.80 by telephoning, writing, or visiting a commission office. The commission's staff may accept collect calls.

**6 AAC 30.015. Class action complaints** Repealed 3/12/81.

**6 AAC 30.020. Investigation, conference, conciliation and persuasion** Repealed 3/12/81.

**6 AAC 30.021. Record of inquiry** The commission's staff will make a written record of an inquiry. Anonymous inquiries will be accepted. The purpose of this record is to document the volume and nature of inquiries and to establish the date of initial contact with the commission if the inquirer later files a complaint. The commission will not disclose its record of individual inquiries unless required by law or court order. Statistical compilations of inquiries will be released periodically.

**6 AAC 30.022. Enforcement procedure for interrogatories and requests for production** Repealed 3/12/81.

**6 AAC 30.025. Subpoenas and subpoenas duces tecum** Repealed 3/12/81.

**6 AAC 30.030. Reconsideration of administrative dismissal by the chairperson** Repealed 3/12/81.

**6 AAC 30.031. Counseling of inquirer** The commission's staff will counsel an inquirer to file a complaint if the inquirer relates facts and circumstances which constitute a violation of AS 18.80. If the facts related do not constitute a violation of the human rights law, the staff will accept a complaint only after advising the inquirer that the case will be closed for lack of jurisdiction.

**6 AAC 30.035. Depositions** Repealed 3/12/81.

**6 AAC 30.040. Notice of hearing** Repealed 3/12/81.

**6 AAC 30.041. Correspondence** Correspondence to the commissioners may be sent in care of the executive director. No commissioner may consider an inquiry, a potential violation of AS 18.80 or a pending complaint until the case is before the commissioners at the hearing stage. Names and addresses of commissioners and commission offices are available from any commission office.

**6 AAC 30.050. Answer** Repealed 3/12/81.

**6 AAC 30.055. Hearing Examiner, Powers and Duties** Repealed 3/12/81.

**6 AAC 30.060. Hearings** Repealed 3/12/81.

**6 AAC 30.070. Written Transcript of the Record** Repealed 3/12/81.

**6 AAC 30.080. Subpoenas and Subpoenas Duces Tecum** Repealed 6/6/75.

**6 AAC 30.090. Depositions** Repealed 6/6/75.

**6 AAC 30.095. Hearing Examiner's Proposed Findings** Repealed 3/12/81.

**6 AAC 30.100. Orders** Repealed 3/12/81.

**6 AAC 30.110. Reopening of Proceedings** Repealed 3/12/81.

**6 AAC 30.120. Exclusiveness of Remedy** Repealed 3/12/81.

**6 AAC 30.130. Employer Reports and Records** Repealed 3/12/81.

**6 AAC 30.140. Amendment of Rules** Repealed 3/12/81.

**6 AAC 30.150. Availability of Rules** Repealed 3/12/81.

**6 AAC 30.160. Construction of Rules** Repealed 3/12/81.

**6 AAC 30.170. Definitions** Repealed 3/12/81.

**6 AAC 30.180. Validity of Regulations** Repealed 3/12/81.

## **Article 2 Complaints**

**6 AAC 30.210. Complaints by individuals** (a) An individual aggrieved by an alleged practice prohibited by AS 18.80 may file a written complaint with the commission. A complaint may be filed in person or by mail at any commission office. (b) The commission's staff will assist in drafting and filing the complaint. (c) A complaint must contain (1) the complainant's full name and address; (2) the full name and address of the person or entity against whom the complaint is made (known as "respondent"); (3) a statement of the alleged harm the complainant has experienced or is experiencing; (4) the reason complainant believes the respondent took or is taking the alleged discriminatory action; (5) the reason given complainant by respondent for the alleged discriminatory action; (6) where appropriate, a statement that one or more individuals are allegedly aggrieved in the same manner as the complainant. The statement must be sufficiently specific that the commission's staff can identify these individuals through investigation; (7) the date of the alleged discriminatory practice. If the practice is continuing, the complaint must state when the practice began, if known to the complainant; (8) repealed 8/9/84; (9) the complaint must be verified. If

a notary or postmaster is not available, the complainant shall state under penalty of perjury that the statements contained therein are true and correct to the best of his or her knowledge, and that a notary or postmaster is not available. (d) The commission's staff will furnish free notary service. (e) An attorney may represent a complainant by filing a notice of appearance with the commission's staff. (f) The complaint will be served promptly upon respondent in person or by certified mail, return receipt requested. The complainant will receive a copy of the complaint. (g) If the acts or practices complained of also constitute a violation of federal law, the commission's staff will give to the appropriate federal enforcement agency a copy of the complaint, unless the complainant directs otherwise. The commission's staff will assist in filing complaints with federal agencies which enforce federal laws similar to AS 18.80, even if the complainant does not want to file a complaint with the commission.

**6 AAC 30.220. Complaints by the executive director** (a) The executive director may file a complaint on behalf of an individual or a class of persons when acts or practices allegedly contrary to AS 18.80 come to his or her attention. A complaint made by the executive director must contain (1) An identification of the class which is sufficiently specific to enable the commission's staff to determine the nature of the class through investigation; (2) A statement of the alleged harm each individual or class has experienced or is experiencing; (3) The date the alleged discriminatory practice occurred. If the practice is continuing, the complaint must state when the practice began, if known to the executive director. (b) A complaint made by the executive director must be notarized. (c) The executive director may file the complaint with the federal enforcement agency having jurisdiction over the alleged unlawful acts or practices.

**6 AAC 30.225. Rebuttal** Repealed.

**6 AAC 30.230. Filing date** (a) The complaint filing date is the date when postmarked or received by the commission, whichever date is earlier. (b) A complaint alleging a discriminatory act or practice not of a continuing nature must be filed no later than (1) 300 days after the alleged discriminatory act or practice occurred, if the act or practice occurred before 8/22/97; or (2) 180 days after the alleged discriminatory act or practice occurred, if the act or practice occurred on or after 8/22/97. (c) A complaint alleging a discriminatory act or practice of a continuing nature must be filed no later than (1) 300 days after the alleged act or practice stopped, for an alleged act or practice that stopped before 8/22/97; or (2) 180 days after the alleged act or practice stopped, for an alleged act or practice that stopped on or after 8/22/97.

### **Article 3 Investigation, Determination, and Conciliation**

**6 AAC 30.310. Resolution conference procedures** (a) The

commission's staff may convene a conference between the complainant and the respondent to define the issues of the complaint, receive information relevant to the investigation and, if possible, to negotiate a resolution of the complaint. (b) The complainant shall attend a resolution conference unless excused by the commission's staff for good cause shown. Respondent's attendance at a resolution conference is voluntary. The commission staff will make no adverse inference concerning the merits of the complaint against a respondent who fails to attend a resolution conference. (c) The commission's staff will advise complainant and respondent in writing of the conference date, the procedures to be followed, and what information should be brought to the conference to assist with the investigation and resolution. (d) The commission's staff will informally and impartially conduct a resolution conference to inquire into facts relevant to the complaint and, at the request of the parties, will assist the complainant and respondent to negotiate a resolution of the complaint. (e) No person may make a transcript or tape recording of the resolution conference. The commission staff will take investigative notes and will accept written evidence from the parties. Evidence received by the staff at this conference may be admissible as evidence in any subsequent hearing before the commission. (f) The commission's staff may not disclose offers and counter offers of settlement made during the conference. (g) The commission's staff member will adjourn the conference when a party fails to cooperate with the commission's staff, acts in bad faith, or in a way which unreasonably annoys, embarrasses or oppresses a participant.

**6 AAC 30.320. Investigation methods by commission staff before conciliation** (a) The commission's staff will determine the nature and scope of the investigation. The commission's staff will impartially obtain and analyze facts relevant to the complaint and determine if the allegations are supported by substantial evidence. During the investigation, the staff may also investigate matters that are like, related to, or growing out of the complaint. The commission's staff may obtain evidence by resolution conference, interview, inspection of documents and premises, or examination of written submissions of parties and witnesses. Any party or witness may offer a relevant statement or evidence for consideration by the commission's staff. (b) To carry out its impartial investigation, the commission's staff may issue requests for production, interrogatories, subpoenas, and subpoenas duces tecum. A party must mail the answers to interrogatories and responses to requests for production within 30 days after service unless the commission's staff grants an extension or modification for good cause shown. The commission's staff may set reasonable times for appearances in response to subpoenas and subpoenas duces tecum. In addition, the following rules apply: (1) the commission's staff shall notify the party to whom interrogatories, subpoenas duces tecum, or requests for production are directed that failure to answer, appear, or produce may result in an adverse

determination by the staff on the merits of the complaint and a loss of the right to offer evidence sought by the interrogatories, subpoenas duces tecum, or requests for production at a later hearing on the complaint; (2) if a complainant fails to answer, appear, or produce information necessary to reach a determination on the merits of the complaint, the commission's staff shall close the case; (3) if a respondent fails to answer, appear, or produce, the commission's staff shall analyze the available evidence and determine whether the complaint is supported by substantial evidence; the staff may base a determination on inferences drawn from the failure to answer an interrogatory, appear, or produce documents, and proceed as follows: (A) if the complaint is supported by substantial evidence, the commission's staff shall issue its determination in writing and try to conciliate the complaint; if conciliation fails and a hearing is convened, the hearing commissioners will not receive any evidence that should have been offered in response to the interrogatories, subpoenas duces tecum, or requests for production issued by the commission's staff; (B) if the complaint is not supported by substantial evidence, the commission's staff may refer the refusal to comply with a subpoena, subpoena duces tecum, request for production, interrogatories, or other process to the Department of Law for appropriate enforcement action in superior court; if the state is a respondent, the commission may employ temporary legal counsel to enforce its investigation process. (4) repealed 12/14/2007. (c) No party may serve interrogatories, requests for production, subpoenas, subpoenas duces tecum, and other process on another party, on the commission's staff, or on any other person before certification of conciliation failure by the executive director. The commission's staff may issue process on any person at the request of a party if the staff determines that the process is reasonably necessary for an impartial investigation, determination, or conciliation of the case. (d) The commission's staff may issue subpoenas and subpoenas duces tecum to take the deposition of any person as part of its impartial investigation. A deposition taken during an investigation may be offered in evidence at a hearing convened under 6 AAC 30.410 - 6 AAC 30.497 if the party taking the deposition informs the parties to the investigation and the person whose deposition is taken of its intended use.

**6 AAC 30.325. Rebuttal** If the commission's staff intends to issue a determination that a complaint is not supported by substantial evidence, the staff shall inform the complainant of its proposed determination and review the evidence supporting the determination with the complainant. The commission's staff shall provide the complainant with an opportunity for rebuttal before a determination that a complaint lacks substantial evidence is made.

**6 AAC 30.330. Determinations** (a) If the commission's staff determines that a complaint is not supported by substantial evidence, or if it determines that closure of a case for any other reason is necessary, it shall

deliver written findings of fact and a determination on each alleged violation of AS 18.80, along with a closing order, to the parties in person or by regular mail. (b) If the commission's staff determines that the complaint is supported by substantial evidence, it will deliver a written determination to the parties in person or by certified mail, return receipt requested. If the commission's staff identifies during the investigation an issue of discrimination or a person not named in the complaint who has been similarly discriminated against, the commission's staff shall identify this issue or person in the determination either by name or with enough specificity that the respondent can identify the issue or the person.

**6 AAC 30.340. Conciliation procedures** (a) The commission's staff will provide the parties with proposed terms of conciliation along with the determination that a complaint is supported by substantial evidence. The commission's staff will propose remedies for each issue and individual identified in the determination. (b) If the commission's staff negotiates conciliation terms that provide a remedy for a person who is not named in the complaint but identified in the determination, the commission's staff will invite the person identified to accept or reject the remedy. (c) The commission's staff or either party shall direct to the class identified in the findings the best notice practicable to those class members who can be identified through reasonable effort. (d) Conciliation by the commission will not prevent an individual who has not filed a complaint from seeking relief outside of the conciliation agreement. (e) Conciliation terms must be agreed to within 30 days after service of the conciliation agreement proposed by the commission's staff. The executive director may grant an extension of time to agree to the terms of conciliation up to 30 days for good cause shown. The executive director will determine that conciliation efforts have failed if (1) the respondent fails to discuss conciliation in a timely manner with the commission's staff; (2) the commission's staff and the parties do not resolve the issues alleged in the complaint; or (3) the respondent fails to fulfill its obligations under the conciliation agreement. (f) For complaints filed (1) before September 13, 2006, if the executive director determines that conciliation efforts have failed, the executive director shall inform the commission's chairperson in writing and refer the complaint to the commission for hearing; (2) on or after September 13, 2006, if the executive director determines that conciliation efforts have failed, the executive director shall inform the commission's chairperson in writing and shall, within 45 days of the determination of the failure, refer the complaint to the commission for hearing or dismiss without prejudice the complaint in accordance with AS 18.80.112(b); a referral must be accompanied by an accusation as provided in AS 18.80.120 and must be served on the parties in person or by certified mail, return receipt requested; if the executive director dismisses the complaint, the executive director must give notice to the commission and serve the parties in person or by regular mail. (g) The executive director may

dismiss without prejudice a complainant when the complainant refuses to accept conciliation terms offered by the respondent which the executive director believes are reasonable. Dismissal for this reason does not prevent a complainant from seeking a remedy in other forums or filing a new complaint under AS 18.80.100 that resolves the grounds for dismissal. (h) The commission's staff will attempt conciliation on behalf of a class of persons identified through investigation as described in 6 AAC 30.330(b) even if the individual complainant fails to participate in or cooperate with conciliation efforts. Complainant's refusal to cooperate will not prevent a settlement on behalf of the class members or result in a determination that conciliation efforts on behalf of the class are unsuccessful.

**6 AAC 30.350. Amendment of complaint before conciliation** A complaint may be amended at any time before certification by the executive director that conciliation has failed. A complaint must be amended if (1) an issue of discrimination or a class of persons adversely affected comes to the attention of the complainant or the commission's staff; and (2) the new issue differs substantially from the issue identified in the original complaint or the person was not named in the complaint.

**6 AAC 30.360. Withdrawal of complaint and substitution as party** (a) For complaints filed before September 13, 2006, an individual complainant may withdraw the individual's complaint at any time before the executive director certifies that conciliation has failed. After the commission's staff has determined that the complaint is supported by substantial evidence, the executive director must approve the withdrawal. Withdrawal of a complaint does not prevent an individual from filing a complaint that alleges a similar related violation of AS 18.80. (b) For complaints filed on or after September 13, 2006, a complainant may withdraw a complaint by submitting a signed, written request to the commission's staff at any time before the executive director serves an accusation under AS 18.80.120. (c) The executive director may substitute the executive director as a party in the place of a complainant who requests withdrawal. The commission's staff shall promptly notify the respondent of the substitution, and the case shall proceed as if the executive director had filed the original complaint.

**6 AAC 30.370. Chairperson review of closures** Repealed.

**6 AAC 30.375. Finality of staff decisions** (a) A dismissal of a complaint by commission staff is a final agency action for the purposes of judicial review. (b) Review of dismissals under AS 18.80.112(c) is limited to those instances in which the commission, on its own volition, determines review furthers the purposes of AS 18.80.

#### **Article 4 Hearing Procedures**

**6 AAC 30.410. Commencement of hearing process** (a) If the executive director refers a complaint to the commission for hearing, the

chairperson shall appoint at least three commissioners to hear and decide the case. The chairperson may replace a hearing commissioner at any time before issuance of a final order. (b) The commission shall request that the office of administrative hearings appoint an administrative law judge to preside as the hearing examiner at the hearing. (c) The administrative law judge or hearing examiner shall conduct a prehearing conference to establish a schedule for discovery, briefing, and exchange of witness lists, and to set the hearing date. (d) Repealed 7/3/96. (e) The original pleadings, motions, stipulations, briefs, and other documents required to be filed before the hearing must be filed with the administrative law judge or hearing examiner, and served on the parties. Documents must be captioned in the same manner as the accusation and must include the commission's case number. (f) Repealed 7/3/96. (g) Repealed 12/14/2007. (h) Repealed 7/3/96. (i) The respondent shall file and serve an answer to the accusation within 20 days after service of notice of assignment of an administrative law judge or hearing examiner. The answer must fairly meet the substance of the accusation and must contain a general or specific admission or denial of the allegations in the accusation. If the respondent lacks knowledge or information, a statement of that lack has the effect of a denial. The answer must state any matter that is a defense. Any allegation in the accusation that is not denied or admitted in the answer will be considered admitted. (j) If an accusation is amended, the respondent shall file and serve an answer to the amended accusation within 20 days after service. If any part of an amended accusation is referred for conciliation under AS 18.80.120(c) and conciliation efforts are not successful, the respondent shall file an answer to the amended accusation within 10 days of the executive director's notice of the failure of the conciliation.

**6 AAC 30.415. Subpoenas** The administrative law judge or hearing examiner may issue subpoenas or subpoenas duces tecum upon the written application of the executive director or the respondent.

**6 AAC 30.420. Class action complaint at hearing** (a) A complaint may be maintained as a class action at a hearing. (1) The executive director may maintain a complaint as a class action only by identifying the class with specificity and by showing that (A) the class is so numerous that joinder of all members is impracticable; (B) there are questions of law or fact common to the class; and (C) the executive director will fairly and adequately protect the interests of the class. (2) An individual may maintain a complaint as a class action only if the executive director determines that it is practicable and in the public interest to certify the complaint as a class action and the executive director can show that (A) the class is so numerous that joinder of all members is impracticable; (B) there are questions of law or fact common to the class; (C) the claims of the complainant are typical of the claims of the class; and (D) the complainant will fairly and adequately protect the interests of the class. (b) An action may be maintained as a class action complaint if

(a)(1) or (a)(2) of this section is satisfied, and (1) the prosecution of separate actions by the individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other class members not parties to the adjudications or which would substantially impair or impede their ability to protect their interests; (2) the party opposing the class has acted or refuses to act on grounds generally applicable to the class which makes final injunctive relief or corresponding declaratory relief appropriate for the entire class; or (3) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action complaint is superior to other available methods for the fair and efficient adjudication of the controversy. (c) The matters pertinent to a determination that the proposed class qualifies as a class under (b)(3) of this section include (1) the interest of members of the class in individually pursuing the prosecution of separate administrative actions; (2) the extent and nature of any litigation concerning the controversy before the action under this chapter is started; (3) the desirability or undesirability of concentrating the litigation of the claims in the administrative hearing; and (4) the difficulties which may be encountered in the management of a class action. (d) The class and its members shall be identified and notified as follows: (1) as soon as practicable after the examiner serves the complaint on the parties, the examiner shall determine whether the complaint is to be maintained as a class action; an order issued under this subsection is conditional and may be altered or amended before the decision on the merits; (2) in any class action complaint maintained under (b)(3) of this section, the examiner shall give the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort; (3) the findings of fact and conclusions of law in an action maintained as a class action under (b)(1) or (2) of this section must describe the members of the class; the findings of fact and conclusions of law in an action maintained as a class action under (b)(3) of this section must describe the members of the class who: (i) were notified as provided in (2) of this subsection, (ii) have not requested exclusion, and (iii) the hearing commissioners determine are members of the class; and (4) when appropriate (A) an action may be brought and maintained as a class action with respect to particular issues; or (B) a class may be divided into subclasses and each subclass treated as a class. (e) In the conduct of a class action under this section, the examiner may make orders which (1) determine the course of proceedings or prescribe measures to prevent repetitious or complicated evidence or argument; (2) protect the members of the class or provide for the fair conduct of the hearing by notifying the

members of any stage of the hearing of the extent of the proposed order, and of the opportunity for members to object to the representation as unfair and inadequate or to otherwise come into the action; (3) impose conditions on the parties; (4) require the amendment of the complaint to eliminate allegations as to representation of absent class members, and that the action proceed without those absent class members; and (f) An order issued under (e) of this section may be altered or amended by the examiner and is not a final decision of the hearing commissioners. (g) A class action may not be dismissed or compromised without the approval of the hearing commissioners. Notice must be given to all members of the class as directed by the examiner before an order of dismissal or compromise takes effect. (h) An order issued in accordance with AS 18.80.130 must describe those persons who are members of the class.

**6 AAC 30.430. Notice of hearing** The administrative law judge or hearing examiner shall give notice of the hearing to the parties at least 15 days before the start of the hearing, unless a shorter time is agreed to by the parties. The notice must state the time and place of the hearing.

**6 AAC 30.435. Motions and other filings** (a) Unless otherwise ordered for good cause or required by this chapter, the rules for filing, service, and consideration of motions in civil proceedings in the courts of this state apply to proceedings under AS 18.80. (b) The administrative law judge or hearing examiner shall promptly rule on motions filed in a case. A request to the hearing commissioners to review an order by an administrative law judge or hearing examiner that is not a final order may only be made upon a showing that the standards set out in the rules for petitions for review in civil proceedings in the courts of this state have been met. (c) If the executive director or the respondent files a motion for a summary decision, the opposing party may request additional time to respond to the motion in order to have a reasonable opportunity for discovery. The administrative law judge or hearing examiner shall grant the request unless it is shown that a reasonable opportunity for discovery has already been provided or additional discovery will not lead to evidence that could support an opposition to the motion. (d) The administrative law judge or hearing examiner shall permit prehearing briefs in all cases and allow post-hearing briefs only for good cause shown, or by stipulation of the parties. (e) Unless otherwise ordered for good cause shown, the rules for computation and enlargement of time and additional time after service in civil proceedings in the courts of this state apply to proceedings under AS 18.80.

**6 AAC 30.440. Conduct of hearing** (a) The executive director has the burden of proving the allegations of the accusation. (b) The parties may attend the hearing in person, telephonically, or by counsel, may present oral testimony or other evidence, and may examine and cross-examine witnesses. The party attending telephonically is responsible for arranging the call and

paying the associated costs. The parties may enter into procedural or substantive stipulations that comply with AS 18.80 or this chapter. (c) The administrative law judge or hearing examiner may, upon reasonable notice, call and examine witnesses, and direct the production and inclusion in the record of documentary evidence. (d) The administrative law judge or hearing examiner may leave the record open after the hearing to permit the inclusion of evidence which was unavailable during the hearing. (e) The administrative law judge or hearing examiner shall conduct the hearing, and rule on the admissibility of evidence, the order and allocation of proof, and all motions and objections. The rule for exclusion of witnesses in civil proceedings in the courts of this state applies to proceeding under AS 18.80. The administrative law judge or hearing examiner may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct during the hearing. (f) The hearing may be continued from day to day or adjourned to a later date or to a different place by announcement at the hearing or by appropriate notice to the parties and the executive director. (g) Oral testimony must be given under oath or affirmation. The examiner may administer the oath. (h) The administrative law judge or hearing examiner shall ensure that the proceedings are recorded. A party may obtain a duplicate audiotape of a hearing by submitting a request in writing to the commission and paying the cost of preparing the duplicate audiotape.

**6 AAC 30.450. Amicus curiae** A brief of an amicus curiae may be filed only if the parties consent in writing or if the examiner grants a motion which requests permission to file the brief. A motion for permission to file a brief must identify the interest of the amicus and must state the reasons why a brief of the amicus is desirable.

**6 AAC 30.460. Evidence** (a) The administrative law judge or hearing examiner shall admit and give probative effect to evidence that is admissible in the superior court. The administrative law judge or hearing examiner shall admit and weigh other evidence on which reasonable persons are accustomed to rely in the conduct of their serious affairs. (b) Repealed 12/14/2007. (c) A party may introduce an affidavit as evidence at a hearing if the party serves a copy of the affidavit at least 10 days before the hearing. The affidavit must be accompanied by a notice of intent to introduce the affidavit into evidence at the hearing and must notify the opposing party that he or she has seven days in which to request cross-examination. Unless the opposing party serves the proponent with a request to cross-examine an affiant within seven days after service of the affidavit, his or her right to cross-examine the affiant is waived and the affidavit, if introduced in evidence, will be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not given after request for it is made, the affidavit may only be used to supplement or explain direct testimony and is not sufficient by itself to support a finding.

**6 AAC 30.470. Recommended decision** (a) The administrative law judge or hearing examiner shall promptly recommend findings of fact, conclusions of law, and an order to the hearing commissioners. A copy of the recommendations will be served on the parties. (b) On any question that is determinative of the jurisdiction of the commission or the culpability of any party, the administrative law judge or hearing examiner may only make recommendations to the hearing commissioners. (c) When demeanor, inconsistency, or personal credibility is a basis for the recommendations, the administrative law judge or hearing examiner shall specifically note these observations in the recommendations. (d) Within 15 days after receipt of the examiner's recommendations, any party may file objections with the administrative law judge or hearing examiner and serve copies on the parties. Responses to objections may not be filed except at the direction of the administrative law judge or hearing examiner. The administrative law judge or hearing examiner may reconsider the recommendations objected to and may order oral argument. If reconsideration is denied, the hearing record together with the recommendations and the objections, if any, will be sent to the hearing commissioners for issuance of a final order. If the administrative law judge or hearing examiner does not rule on the objections within 20 days after the objections were filed, the objections will be considered denied. (e) The administrative law judge or hearing examiner may grant a reasonable extension to file objections if a party shows that a transcript is essential to make an objection, or for other good cause shown.

**6 AAC 30.480. Orders by hearing commissioners** (a) The hearing commissioners will review the hearing record and issue a final order determining the controversy, making corrections, amendments or changes in the recommended findings of fact, conclusions of law, and proposed order as they consider necessary; or the hearing commissioners may remand the matter to the administrative law judge or hearing examiner with directions to take additional evidence, rewrite the proposed findings, conclusions, and proposed order; or take any other action they consider appropriate. The hearing commissioners will provide a period for objections to revised findings, conclusions, or proposed orders of the administrative law judge or hearing examiner. (b) The remedial authority of the commission under AS 18.80.130(a) includes the authority to order any legal or equitable relief that is reasonably calculated to prevent future violations of a similar nature or that reasonably compensates the complainant or the class for losses incurred as a result of the unlawful conduct, including out-of-pocket expenses. A monetary award under this section may include an order that interest on the amount due be paid as provided in AS 09.30.070(a). (c) The decision of the hearing commissioners must be by majority vote and is a final administrative order. A hearing commissioner may file a concurring or dissenting opinion. (d) A copy of the commission's order will be served upon the parties. The parties will be advised of their right to seek judicial review under AS 44.62.560 - AS

44.62.570. (e) A copy of final orders of the commission will be maintained at each office of the commission, and will be filed with state law libraries and with the attorney general.

**6 AAC 30.490. Expenses** The executive director will determine what hearing expenses shall be paid by the commission to present the facts in support of the accusation. The expenses will be made in the public interest and when state money is available. Complainant and respondent, at their own expense, may incur additional costs and apply for reimbursement under 6 AAC 30.492.

**6 AAC 30.492. Attorney's fees or costs** (a) Not later than 10 days after the decision of the hearing commissioners is served, a party may request by motion the commission to order the payment of attorney's fees or costs. The motion shall be filed with the administrative law judge or hearing examiner. After providing a reasonable opportunity to respond, the administrative law judge or hearing examiner shall issue a recommended decision on the motion. The recommended decision is subject to the procedures in 6 AAC 30.470(d) and (e). The hearing commissioners will issue a final order on the motion in accordance with the procedures set out in 6 AAC 30.480(a) and (c) - (e). (b) An award of attorney's fees and costs will be made against a complainant upon a showing that he or she pursued an action not authorized by the executive director that was frivolous, unreasonable, or groundless, or that an action authorized by the executive director was based upon information furnished in bad faith by complainant. (c) No award will be made for attorney's fees and costs incurred by a party before issuance of notice of conciliation failure.

**6 AAC 30.495. Sanctions** The examiner may order a party or counsel who knowingly uses these regulations for delay, or who fails to comply with these regulations or other procedures previously ordered, to pay costs, including attorney's fees and damages, to any other person who has been harmed by the delay or failure to comply.

**6 AAC 30.497. Hearing record** (a) The hearing record consists of the accusation and answer, as amended, the recording of the hearing, exhibits and depositions admitted or excluded by the administrative law judge or hearing examiner, affidavits, stipulations, briefs, orders, the recommended decision and objections to it, and the final order of the hearing commissioners. (b) A party may purchase from the commission (1) a copy of the audiotape of the hearing; or (2) a transcript of the audiotape of the hearing, if the commission prepares a transcript.

**6 AAC 30.510. Discovery** (a) The executive director and the respondent may engage in reasonable discovery. Unless otherwise ordered or agreed to by the parties, the rules for discovery in civil proceedings in the courts of this state apply, except that the initial disclosure requirements of

those rules do not apply. The commission strongly encourages informality and cooperation between parties in the discovery process. (b) The executive director shall make the investigative file available to the complainant and respondent upon request within a reasonable time after issuing the accusation. Records and information required to be kept confidential by law must be withheld from disclosure.

**6 AAC 30.520. Persons before whom depositions may be taken**  
Repealed.

**6 AAC 30.530. Stipulations regarding discovery procedures**  
Repealed.

**6 AAC 30.540. Depositions upon oral examination** Repealed.

**6 AAC 30.550. Use of deposition at hearings** Repealed.

**6 AAC 30.560. Interrogatories to parties** Repealed.

**6 AAC 30.570. Production of documents** Repealed.

**6 AAC 30.580. Requests for admission** Repealed.

**6 AAC 30.590. Failure to make discovery; sanctions** Repealed.

**6 AAC 30.810. Employer records** (a) An employer subject to AS 18.80 shall make, and keep for two years, records of the race, age, and sex of its applicants for employment and its employees. (b) An employer who is being investigated under AS 18.80 shall retain, until final disposition of the complaint, all records relevant to the determination of the complaint. These records include (1) application forms, including records of the race, age, and sex of applicants; (2) position descriptions; (3) classification studies; (4) payroll data; (5) personnel files, including employment application forms and other records pertaining to hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; (6) any other records relevant to the employment status of employees and applicants which the employer makes in the ordinary course of business. (c) An employer may request of applicants or employees the information listed in (a) of this section if the information is obtained to further a good-faith affirmative action plan designed to avoid or overcome conspicuous imbalance in a work force.

**6 AAC 30.820. Labor union records** (a) A labor organization subject to AS 18.80 shall make, and keep for two years, records of the race, age, and sex of its members, applicants for membership, and others using its services. (b) A labor organization that is being investigated under AS 18.80 shall retain, until final disposition of the complaint, all records relevant to the determination of the complaint. These records include (1) logs and other records which document the dispatch of members and others for employment; (2) application forms and other records relevant to selection

and training of apprentices; (3) membership logs and registers, including records of dues payments, contributions to benefit programs and hours worked; and (4) other records relevant to the affiliation of persons with the labor organization or the use of its services which the labor organization makes in the ordinary course of business. (c) A labor organization may request of applicants the information listed in (a) of this section if the information is obtained to further a good-faith affirmative action plan designed to avoid or overcome conspicuous imbalance in its membership, dispatch, and apprenticeship program.

**6 AAC 30.830. Employment agency records** (a) An employment agency subject to AS 18.80 shall make, and keep for two years, records of the race, age, and sex of candidates for job referrals. (b) An employment agency which is being investigated pursuant to AS 18.80 shall retain, until final disposition of the complaint, all records relevant to the determination of the complaint. These records include (1) job orders placed by prospective employers and records of the selection and referral of candidates to employers; (2) applications and files of persons seeking referral by the employment agency to prospective employers, including reference checks and verification of employment history; and (3) other records relevant to the acceptance of job orders or the referral of prospective candidates which the employment agency makes in the ordinary course of business. (c) An employment agency may request of persons seeking referral the information listed in (a) of this section if the information is obtained to further a good-faith affirmative action plan designed to avoid or overcome conspicuous imbalance in referral patterns.

**6 AAC 30.840. Retention of records** (a) The records specified in 6 AAC 30.810 - 6 AAC 30.830 must be maintained for inspection and copying by the commission for at least two years after the record is made. (b) In addition to the requirement in (a) of this section, a respondent must maintain the records of a person who has filed a complaint with the commission, or records of a class of persons named in a complaint filed with the commission, and the records of persons or classes in similar or related circumstances until final disposition of the complaint by the commission.

**6 AAC 30.850. Failure to keep records** The executive director may file a complaint alleging a violation of AS 18.80.220(b) if an employer, labor organization or employment agency fails to make and retain the records specified in 6 AAC 30.810 - 6 AAC 30.830. If this failure is discovered during investigation of a complaint, the commission's staff may include in its determination a finding of noncompliance with AS 18.80.220(b). Conciliation efforts will seek to secure compliance with 6 AAC 30.810 - 6 AAC 30.830, and failure of conciliation will result in a hearing on the recordkeeping issue.

**6 AAC 30.860. Commission studies** The commission will study employment practices periodically to discover potential violations of AS 18.80

and will request access to records kept under 6 AAC 30.810 - 6 AAC 30.830. These requests are "inquiries" as specified in AS 18.80.060(b)(4) and are subject to the compulsory process in that subsection. The commission may publish the results of its study in a form which does not disclose the identity of a reporting entity.

**6 AAC 30.905. Access to investigative files** Records of investigation and information obtained during an investigation or inquiry are confidential and may not be disclosed except in accordance with AS 18.80.115. Records and information required to be kept confidential by law must be withheld from disclosure.

**6 AAC 30.910. Substantive standards** (a) Determinations by the commission's staff, recommendations by examiners and adjudications by hearing commissioners will be made consistent with state decisions on AS 18.80, commission decisions, commission guidelines, regulations, and policy statements. (b) The commission considers instructive, but not binding, relevant federal case law, statutes, regulations, and guidelines if they do not limit the commission's obligation to construe AS 18.80 liberally. In deciding complaints of alleged discrimination under AS 18.80 in employment, state and local government services, or public accommodations because of physical or mental disability, the commission may use 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act) and relevant federal case law as a guideline. If there is a conflict between these federal laws and AS 18.80 and the regulations in this chapter, the provisions of state law will govern when state law is more liberal than federal law. (c) It is a defense to a complaint of unlawful discrimination to establish by clear and convincing evidence that a distinction in employment prohibited by AS 18.80.220(a)(1) is required by business necessity or the reasonable demands of the position. "Business necessity" or "reasonable demands of the position" means that the distinction is necessary to the safe and efficient operation of the business; the business purpose is sufficiently compelling to override any disproportionate impact on an individual protected by AS 18.80.220(a), and the challenged business practice efficiently carries out the business purpose it is alleged to serve, and there is no available or acceptable policy or practice which would better accomplish the business purpose advanced or accomplish it equally well with less discriminatory impact on the complainant.

**6 AAC 30.920. Cases filed in superior court** When a complaint is filed in superior court alleging a violation of AS 18.80, the plaintiff shall promptly serve a copy of the complaint on the executive director. If the same parties or issues are currently before the commission, the commission, in its discretion, will seek intervention in the civil action or deferral of the civil action to the commission, or it will close or hold in abeyance the complaint before the commission.

**6 AAC 30.930.** Reserved.

**6 AAC 30.940. Reopening** The hearing commissioners may reopen a case closed under 6 AAC 30.480 on their own motion or on a motion of a party. A motion for reopening must be filed with the commission within 15 days after service of the final order. The power to reopen a case expires 30 days after the service of the order. If no action is taken on a motion for reopening within the time allowed, the motion is considered denied.

**6 AAC 30.950. Publication of case results** The executive director will publish the result of complaints when the public interest will be served by educating persons as to their rights, remedies and obligations under AS 18.80. Names of parties will not be disclosed by the commission without their consent if the case is resolved before certification of conciliation failure by the executive director. The commission will disclose the identity of parties to cases which are resolved after certification of conciliation failure.

**6 AAC 30.960. Local human rights commissions** The commission will, in its discretion, sign agreements with local human rights commissions which share responsibility for resolving discrimination cases to avoid duplication and overlap in processing. The commission will accord substantial weight to the findings and orders of local human rights commissions if the result is consistent with the requirements of AS 18.80 and this chapter.

**6 AAC 30.970. Availability of regulations** Copies of AS 18.80, commission regulations, commission decisions and case law on AS 18.80 are available for public inspection at all offices of the commission and at state law libraries.

**6 AAC 30.975. Construction of regulations** The regulations in this chapter shall be liberally construed to accomplish the purposes of AS 18.80 and the policies of the commission. A party appearing before the commission without counsel will not be penalized or prejudiced if the party has made a good-faith effort to comply with these regulations.

**6 AAC 30.980. Validity of regulations** If a provision of this chapter or its application to any person or circumstance is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any regulation loses its force and effect, that judgement or action does not affect the remainder of this chapter.

**6 AAC 30.985. Exemption** Any organization operated for charitable or educational purposes and supervised or controlled by or in connection with a religious organization is not prohibited from limiting admission to or giving preference to persons of the same religion or denomination or otherwise making a hiring decision that will promote the religious principles for which it is established or maintained.

**6 AAC 30.990. Definitions** (a) Unless the context indicates otherwise, in this chapter or in AS 18.80 (1) "practice or practices contrary to practice or practices contrary to" AS 18.80.220 - AS 18.80.260; (2) "place of public

accommodation, resort or amusement" includes but is not limited to educational institutions and all places included in the meaning of that term as it appears in AS 18.80.300(7); (3) "commission" means the State Commission for Human Rights; (4) "commissioner" means one of the members of the State Commission for Human Rights; (5) "chairperson" means the duly elected chairman or chairwoman of the State Commission for Human Rights, or in the absence of the chairperson, the vice-chairperson or other commissioner designated by the remaining members of the commission; (6) "hearing commissioners" means the commissioners designated by the chairperson to conduct a hearing; (7) "party" or "parties" means the complainant, respondent or executive director; (8) "discrimination because of marital status or changes in marital status" includes unjustified adverse action taken against a person because that person is single, married, widowed or divorced, or because of that person's marriage or termination of marriage to another person; (9) "executive director" includes the designee of the executive director who presents the case in support of the accusation; (10) "investigative files" means all information acquired during the course of investigation of a complaint but does not include (A) information whose release is prohibited by federal law or regulation, or state law; (B) intra-agency memoranda or staff work product; (C) attorney work product; (11) "public" means persons other than the parties, but does not include those government agencies (A) which are investigating or taking formal action under AS 18.80.200 - AS 18.80.295; (B) whose stated policy and purpose is to eradicate discrimination in employment; credit and financing practices; places of accommodation; practices by the state or its political subdivisions; or the sale, lease, or rental of real property. (b) Repealed 12/14/2007. (c) Repealed 12/14/2007. (d) For purposes of AS 18.80.240, the terms "lease" or "rental" of real property does not apply to the payment of rent for a room in a dwelling unit when the lessor and lessee will be sharing common living areas in the dwelling unit and the lessor actually occupies the dwelling unit as a resident.